UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1.   ! " a##$%&at%on %$ed on 22 ' a" 2014(t)e A##$%&ant(

Bn t)%s &onte<t and o* #u*#oses o al *e%n o*&%ng ou* a&t%on .%C t)e *eg%on to 7)%& 7e a*e #*o.%d%ng su##o*t and 8l se#a*ate§" st*engt)en%ng ou* a##*oa&) to !e§g%um and +u<em8ou*g(?;.@ 7%$$

11.

e.a$uat%on0. Bn sa%d memo*andum(s)e Duest%oned t)e d%s&ont%nuat%on o)e* #os%t%on and t)e su8seDuent de&%s%on to te*m%nate)e* a##o%ntment e e&t%.e 31 ' a" 2014.

1F. , n 7 ' a" 2014(t)e A##%&ant %%ed 8e o*e t)e T*%8una$ an a##%&at%on o* sus#ens%on o a&t%on o t)e de&%s%on to d%s&ont%nue)e* #os%t%on and o t)e &onse&ut%.e te*m%nat%on o)e* %nde %n%te a##o%ntment. T)e a##%&at%on 7as *eg%ste*ed unde* Case No. UNDT/GVA/ / /

1F9-0.95892(.)250] T J D/R21 11.28 T f D14.1872 0 T dD( )T j D/R17 11.28 T f D12.5039 0 T d

as u*t)e* m*ss*ng do&uments(and t)e)o$d*ng o an o*a$)ea*ng. >)e a$so *$ed add*t*ona$ e.*den&e.

32. !" , *de* No. 97 -GVA/2015l o 5 ' a" 2015(t)e 2es#ondent 7as o*de*ed to #*o.*de add*t*ona$ e.*den&e 8" 19 ' a" 2015(and t)e A##$*&ant 7as g*.en a&&ess to a *eda&ted .e*s*on o t)e ex parte

a.   T)e 2es#ondent ۱$e o8se*.at۱ons on t)e A##$۱&ant₦s 1 June 2015 su8m۱ss۱on 8" 3 Ju$" 2015:

8.   T)e A##$۱&ant ۱$e &omments(۱ an"(on su&) o8se*.at۱ons 8" 10 Ju$" 2015:

&.   T)e #a*t۱es ۱$e 8" 16 Ju$" 2015 a Io۱nt statement o a&ts and ۱ssues(a Io۱nt 8und$e o do&uments(a $۱st o aut)o*۱t۱es and an" su8m۱ss۱on t)e" ma" 7۱s) ۱n *es#e&t o t)e e e&t o t)e amendment to a*t. 10.5-8۱ o t)e T*۱8una$₦s >tatue ado#ted 8" t)e Gene*a$ Assem8$" on 1F De&em8e* 2015: and

d.   T)e #a*t۱es ۱$e 8" 30 Ju$" 2015 u*t)e* su8m۱ss۱ons(۱ an"(on t)e ۱$۱ngs *e e**ed to unde* #a*ag*a#) 3F.& a8o.e.

39.   ۱n 3 Ju$" 2015(t)e 2es#ondent ۱$ed)۱s o8se*.at۱ons as o*de*ed.

40.   ۱n 10 Ju$" 2015(t)e A##$۱&ant ۱$ed)e* &omments on t)e 2es#ondent₦s 3 Ju$" 2015 su8m۱ss۱on.

41.   ۱n 16 Ju$" 2015(t)e A##$۱&ant ۱$ed a su8m۱ss۱on ۱n *es#onse to t)e T*۱8una$₦s d۱*e&t۱ons *e e**ed to ۱n #a*ag*a 5Te944&5(#)9.2092768(n)9.944(o)-0.960221(n)-0.960

anot)e* #os%t%on. >e&ond(8a&E %n 2005(t)e*e)ad 8een a *e&$ass% %&at%on o t)e #ost t)at t)e A##$%&ant en&um8e*ed *om t)e Gene*a$ >e*.%&e &atego*" to t)at o Nat%ona$ P*o ess%ona$, %&e*(and s)e 7as a##o%nted to t)e $atte*:

8. Bn de&%d%ng to d%s&ont%nue t)e A##$%&ant%s #ost t)e*e 7as a a%$u*e to)o$d and #*omote t)e)%g)est standa*ds o et)%&a$ and #*o ess%ona$ &ondu&t(and t)e*e 7as an a8use o aut)o*%t":

&. T)e*e)as 8een an a8use o aut)o*%t" 8" t)e !*usse$s 2e#*esentat%.e as t)e de&%s%on to d%s&ont%nue t)e t7o N , ! #os%t%ons(one o 7)%&) t)e A##$%&ant en&um8e*ed(a##ea*s to 8e t)e management%s *es#onse to add*ess t)e ongo%ng tens%ons %n t)e !*usse$s 2 2 3 4 +ega$ Un%t. Bn t)e same $%ne(t)e a&t t)at t)e memo*andum 8" t)e !*usse$s 2e#*esentat%.e on t)e #*o#osed &)anges %n t)e st*u&tu*e o t)e , %&e(%n&$ud%ng t)e a8o$%t%on o)e* #ost(%s dated 23 >e#tem8e* 2013(7)%&) %s t)e same da" on 7)%&) t)e A##$%&ant)ad a d% &u$t &on.e*sat%on 7%t) t)e !*usse$s 2e#*esentat%.e s)o*t$" a te* e<#*ess%ng &on&e*n a8out ee$%ng t)at s)e needed anot)e* "ea* o >+3 , P(s)ou$d not 8e *ega*ded as a me*e &o%n&%den&e and 8e u*t)e* %n.est%gated. T)e #)"s%&%an s)e &onsu$ted on t)e ne<t da"(%.e.(on 24 >e#tem8e* 2013(%ssued a &e*t% %&ate o* a t)*ee-7eeE)ome *est. T)e a&t t)at s)e 7as d*%.en to a #o%nt 7)e*e s)e 7as ee$%ng $%Ee *es%gn%ng *om)e* #os%t%on s)ou$d not g%.e &ause to d%s&ont%nue)e* #os%t%on:

d.

e.   Classification of posts and staff within the Busseis 2 2 3 4 has not been conducted according to the nature of the duties

iii. In view of the number of National, Field and International Professional posts in Brussels, her case should have been reviewed by a Local Assignments Committee (LAC) and not by the RAC, in application of paragraph 114 of PPAL:

i. The failure to respond to or address a request or management evaluation before the relevant response period or such has expired constitutes a breach of fundamental rights:

I. In view of the above, the Applicant requests:

i. Rescission of the contested decisions and compensation for substantive and procedural irregularities, as well as for the Administration's failure to follow its own rules:

ii. The Tribunal to conclude that there were irregularities in the process leading to the discontinuation of the post she encumbered and the consequent termination of her indefinite appointment, and that they constituted an abuse of authority by improperly influencing her career and employment conditions:

iii. The Tribunal /to acknowledge that the failure by the Respondent to critically review his decisions and to take remedial action before cases escalated to the Dispute Tribunal, and the Respondent's failure to respond to the observations made by the Applicant [A] obstructing a fair and expeditious disposal of the proceedings(%04 3 6())9.2 2l66$4-2 29.)tot e%02 2 2 59 3 (t)0.8 7 4 3 4 7(o)] T J 808%on

accomplish) his or her task, making up his or her mind and
elaborating on a Judgment motivated in reasons of fact and law
related to the parties' submissions.

3. Thus, the authority to render a Judgment gives the Judge an
inherent power to individualice and define the administrative
decision impugned by a party and identify what is in fact being
contested and so, subject to Judicial review, which could lead to
grant or not to grant the requested Judgment.

46. The administrative decisions challenged in this case are:

a. The discontinuation, effective 1 June 2014, of the position the
Applicant encumbered -position No. 100111491: and

8.

51.   Anne< 1(Pa*t 5(o t)e ;*ame 7 o*E #*o.%des o* / Post C)anges0 and inter alia o* t)e o$$o 7 %ng 6

53. Hence, the Tribunal finds that the evidence on record shows that the discontinuation of the post encumbered by the Applicant resulted from its abolition in the context of a restructuring exercise.

54. The Tribunal notes that the Applicant has abundantly addressed what she perceives to be post classification shortcomings within UNHCR, for example, staff members performing functions not in line with the grade at which the post they encumber is classified, or /under classification0 of posts, non-compliance with the Charter of the United Nations and with UNHCR issuances on post classifications.

55. Furthermore, the Applicant emphasized in her submissions that /the issue she wished@ to see addressed is the classification of posts and staff according to the nature of the duties and responsibilities required0. However, given the Tribunal's above finding, matters related to classification of posts within UNHCR have no bearing on its examination of the legality of the clearly identified administrative decision at issue, namely the abolition of the post encumbered by the Applicant.

56. Next the Tribunal recalls that it is well established by the jurisprudence of the United Nations [remainder of line illegible]

disadvantaging the individual applicant in a case before it. Reorganising and restructuring of the workplace should not be used as a mechanism of getting rid of an employee whom management may regard as being troublesome or whose continued presence was no longer deemed desirable.

5F.

#osts 7e$$ 8e"ond t)ose %n !e§g%um a§one. T)e*e %s no e.%den&e t)at t)e e**o* %n

*es#e&t o t)e a8%$%t" o Nat%ona$ P*o ess%ona$, %&e*s to unde*taEe *eg%ona$ 7o*E

7as t)e dete*m%nat%.e %ssue %n *es#e&t o t)e *eo*gan%Cat%on a e&t%ng man" o t)e

o#e*at%ons o t)e UN5C2 %n 3 este*n 4u*o#e(%n&ud%ng !e§g%um.

71.   Bt %s u*t)e* noted t)at t)e &ons%de*at%ons *e e**ed to %n t)e memo*andum o

23 >e#tem8e* 2013 &annot 8e sa%d to)a.e 8een t)e *esu$t o (o* %n an" 7a"

&onne&ted to(t)e d%s&uss%on o t)e A##$%&ant 7%t))e* su#e*.%so* on t)e same da".

T)e memo*andum %s s%< #ages %n $engt)(and &onta%ns a deta%$ed ana$"s%s o t)e

*eDu%*ements o t)e UN5C2(as assessed 8" t)e !*usse$s 3 4 2eg%ona$

2e#*esentat%.e. An" %n e*en&e to t)e e e&t t)at t)e a8o$%t%on o t)e #ost

en&um8e*ed 8" t)e A##$%&ant 7as *e$ated to t)e d%s&uss%on s)e)ad 7%t) t)e

!*usse$s 2e#*esentat%.e %s not su##o*ted 8" t)e e.%den&e. T)e A##$%&ant)as not

#*o.en t)at t)e %ssuan&e o t)e memo*andum on t)e same da" as t)e d%s&uss%on %s

an"t)%ng e$se t)an #u*e$" &o%n&%denta$.

72.   Bn .%e7 o t)e o*ego%ng(t)e T*%8una$ %nds t)at t)e #*o&ess $ead%ng to t)e

a8o$%t%on o t)e #ost en&um8e*ed 8" t)e A##$%&ant *es#e&ted t)e a##$%&a8$e

#*o&edu*es(and t)at t)e*e %s no e.%den&e o %t 8e%ng ta%nted 8" %m#*o#e* mot%.e.

Termination of the Applicant's indefinite appointment

73.   3%t) *es#e&t to te*m%nat%on o* a8o$%t%on o #ost(sta *u$e 9.6 inter alia

#*o.%des t)at6

            -e1   4<&e#t as ot)e*7%se e<#*ess$" #*o.%ded %n

#a*ag*a#) - 1 8e$o7 and sta *u$e 13.1(% t)e ne&ess%t%es o se*.%&e

*eDu%*e t)at a##o%ntments o sta mem8e*s 8e te*m%nated as a

esu$t o t)e a8o$%t%on o a #ost o t)e *edu&t%on o sta (and su8Ie&t

to t)e a.a%$a8$e #osts %n 7)%&) t)e%* se*.%&es &an 8e

e e&t%.e$" ut%$%Ced(#*o.%ded t)at due *ega*d s)a$$ 8e g%.en %n a$$

&ases to *e$at%.e &om#eten&e(%nteg*%t" and $engt) o se*.%&e(sta

mem8e*s s)a$$ 8e *eta%ned %n t)e o$$o7%ng o*de* o #*e e*en&e6

            -%1   >ta mem8e*s)o$d%ng &ont%nu%ng a##o%ntments:

3)en t)e su%ta8§e #osts a.a%§a8§e a*e su8Ie&t to t)e #*%n&%#§e o
geog*a#)%&a§ d%st*%8ut%on(due *ega*d s)a§§ a§so 8e g%.en to
nat%ona§%t" %n t)e &ase o sta   mem8e*s 7%t) §ess t)an %.e "ea*s o
se*.%&e and %n t)e &ase o sta   mem8e*s 7)o)a.e &)anged t)e%*
nat%ona§%t" 7%t)%n t)e #*e&ed%ng %.e "ea*s.

   - 1   T)e #*o.%s%ons o #a*ag*a#) -e1 a8o.e %nso a* as
t)e" *e§ate to sta   mem8e*s %n t)e Gene*a§ >e*.%&e and *e§ated
&atego*%es s)a§§ 8e deemed to)a.e 8een sat%s%ed % su&) sta
mem8e*s)a.e *e&e%.ed &ons%de*at%on o* su%ta8§e #osts a.a%§a8§e
7%t)%n t)e%* #a*ent o*gan%Cat%on at t)e%* dut" stat%ons.

74.   T)e Com#a*at%.e 2e.%e7 Po§%&" /#*o.%des #*%n&%#§es and #*o&edu*es o t)e

&om#a*at%.e *e.%e7 to 8e o§§o7ed %n &ases o ant%&%#ated te*m%nat%on o*

a8o§%t%on o #osts A #u*suant to >ta   2u§es 9.6-e1 and -1 %n t)e Gene*a§ >e*.%&e

and Nat%ona§ , %&e* &atego*%es0(and states t)at /?s@ta   mem8e*s 7)ose #osts a*e

d%s&ont%nued 7%§§ not automat%&a§§" 8e se#a*ated0.

75.   ;%na§§" %n %ts se&t%on /Com#a*at%.e 2e.%e7 P*%n&%#§es0(t)e Com#a*at%.e

2e.%e7 Po§%&" #*o.%des t)e o§§o7%ng6

   4.   P*%o* to unde*taE%ng a &om#a*at%.e *e.%e7(t)e &on&e*ned
o %&e s)ou§d .e*% " t)at t)e*e a*e no sta   mem8e*s on
tem#o*a*" a##o%ntments o* a %§§ate 7o*E o*&e underta ing
similar functions to t)ose o t)e d%s&ont%nued #os%t%on-s1
and 7)ose &ont*a&t d%s&ont%nuat%on 7ou§d m%t%gate t)e need
o* a &om#a*at%.e *e.%e7 -em#)as%s added1.

   5.   A &om#a*at%.e *e.%e7 #*o&ess %s t)e means 8" 7)%&) sta
mem8e*s en&um8e*%ng #os%t%ons 7)%&) a*e to 8e a8o§%s)ed(
and 7)o)o§d %nde %n%te o* %<ed=te*m a##o%ntments not
e<#%*%ng on o* 8e o*e t)e e e&t%.e date o t)e a8o§%t%on o
t)e *e§e.ant #os%t%on(7%§§ 8e mat&)ed aga%nst su%ta8§e #osts
a&&o*d%ng to a set o &*%te*%a *e§at%ng to t)e sta   mem8e*sH
su%ta8%§%t" o* su&) #osts. T)e /su%ta8§e #osts0 a*e
%nte*#*eted(o* t)e #u*#ose o t)e &om#a*at%.e *e.%e7(as
#osts at t)e sta   mem8e*Hs dut" stat%on and at t)e sta
mem8e*Hs g*ade §e.e§ and 7%t)%n t)e same un&t%ona§ g*ou#
as #e* t)e(o)-0.%022#9.e.

76. From the above, it is clear that in the context of an exercise to abolish a post, the intent and purpose of paragraph 4 is that the Administration looks for alternative employment of its staff affected in a situation of abolition of posts.

77. The Applicant alleges that since November 2013, a staff member serving on a temporary appointment at the G-6 level -/G-6 TA01 graduated took over the functions of the position she encumbered and that, there one it should have been determined that this person's contract discontinuation would have mitigated the need for a comparative review, in application of paragraph 4 of the Comparative Review Policy.

78. The Respondent noted that the G-6 TA was charged against a G-6 position, which was three grades lower than that of the Applicant and performing the

F0.   T)e T*%8una$ d%sag*ees 7%t) t)e 2es#ondent and %s o t)e .%e7 t)at(%ndeed(#a*ag*a#) 4 o t)e Com#a*at%.e 2e.%e7 Po$%&" s)ou$d)a.e 8een a##$%ed %n t)e A##$%&antHs &ase. ;u*t)e*mo*e( )ad t)%s 8een done(t)e*e 7ou$d)a.e 8een no need o* a &om#a*at%.e *e.%e7(as %ts a##$%&at%on 7ou$d &$ea*$")a.e /%t%gated t)e need o* ?%t@0 as e<#*ess$" #*o.%ded %n #a*ag*a#) 4 o t)e Com#a*at%.e 2e.%e7 Po$%&".

F1.

FF.   G%.en t)e a8o.e %nd%ngs(%t %s not ne&essa*" to #*o&eed to u*t)e* e<am%ne t)e a##$%&at%on o #a*ag*a#) 5 o t)e Com#a*at%.e 2e.%e7 Po$%&"(as #a*ag*a#) 4 o#e*ates as a #*e&ond%t%on 8e o*e t)e unde*taE%ng o t)e &om#a*at%.e *e.%e7 #*o&ess #*o.%ded o* %n #a*ag*a#) 5.

F9.   A*t. 10.5-a1 o t)e UNDT >tatute #*o.%des t)at t)e T*%8una$ /s)a$$ A set an amount o &om#ensat%on t)at t)e ?2@es#ondent ma" e$e&t to #a" as an a$te*nat%.e to t)e *es&%ss%on o t)e &ontested adm%n%st*at%.e de&%s%on0(as t)e de&%s%on t)at)as 8een ound to)a.e 8*ea&)ed t)e A##$%&ant%s te*ms o a##o%ntment &on&e*ns te*m%nat%on. Bn &a$&u$at%ng t)e amount o &om#ensat%on(t)e A##ea$s T*%8una$)as st*essed t)at %ts dete*m%nat%on must 8e done on a &ase=8"=&ase 8as%s(and t)at %t &a**%es a &e*ta%n deg*ee o em#%*%&%sm -see Mwamsa ut%g *2yr* *(i)* *JTJ* *p - 1 5 5* . ui